UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/652,017	08/29/2003	George M. Hurtis	YOR920030311US1	9678

7590	07/31/2006

Philmore H. Colburn II
CANTOR COLBURN LLP
55 Griffin Road South
Bloomfield, CT 06002

EXAMINER
WOO, ISAAC M

ART UNIT	PAPER NUMBER
2166	

DATE MAILED: 07/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

	Office Action Summary	Application No.	Applicant(s)
		10/652,017	HURTIS ET AL.
		Examiner	Art Unit
		Isaac M. Woo	2166

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>26 June 2006</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-36</u> is/are pending in the application.

    4a) Of the above claim(s) <u>27 and 28</u> is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-21 and 29-36</u> is/are rejected.

7)☒ Claim(s) <u>22-26</u> is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>8/29/2003</u>.

4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

1.   This action is in response to Applicant's Election in response to the

Election/Restriction requirement set forth in the June 26, 2006, filed on July 28, 2006.

2.   Applicant elected Group I, claims 1-26 and 29-36 with traverse, filed on June 26,

2006. However, it is not found persuasive.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as subcombinations disclosed as usable together

in a single combination. The subcombinations are distinct from each other if they are

shown to be separately usable. In the instance case, invention I can be used for at

least one top level node, at least one leaf node dependent upon the at least one top

level node, assigning attributes to nodes in the hierarchy, the attributes sharing uniform

characteristics, and selectively assigning at least one dimensional attribute to a node

operable for invoking an analysis based upon the at least one dimensional attribute,

wherein dependent nodes inherit dimensional attributes assigned to corresponding

upper level nodes, which is creating hierarchy data structure. Invention II can be used

for a data collection component operable to collecting raw data, a closed loop/corrective

action component operable for resolving nonconformance issues resulting from

analysis, an analytic engine in communication with the data collection component, the

multi-dimensional commodity model component, the closed loop/corrective action

component, wherein the analytic engine performs, receiving the raw data from the data

collection component, receiving the commodity constituent model, performing analytics

on the raw data according to rules defined by the commodity constituent model, if the

performing analytics results nonconformance, transmitting nonconformance data to the

closed loop/corrective action component, which is analyzing raw data with data

structure constituent model for data structure referencing. See MPEP 806.05(d).

Therefore, the requirement is still deem proper.

3.   Claims 1-26 and 29-36 are presented for examination for this office action

(Claims 27-28 are withdrawn).

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or
composition of matter, or any new and useful improvement thereof, may obtain a patent therefor,
subject to the conditions and requirements of this title.

4.   Claims 1-26 are rejected under 35 U.S.C. § 101 because the claimed invention is

directed to non-statutory subject matter.

As set forth in MPEP 2106 (II) (A):

A. Identify and Understand Any Practical Application Asserted for the

Invention

The claimed invention as a whole must accomplish a practical

application. That is, it must produce a "useful, concrete and tangible

result." *State Street, 149 F.3d at 1373, 47 USPQ2d at 1601-02.* The purpose of
this requirement is to limit patent protection to inventions that possess a
certain level of "real world" value, as opposed to subject matter that
represents nothing more than an idea or concept, or is simply a starting
point for future investigation or research *(Brenner v. Manson, 383 U.S. 519,
528-36, 148 USPQ 689, 693-96); In re Ziegler, 992, F.2d 1197, 1200-03, 26
USPQ2d 1600,1603-06 (Fed. Cir. 1993)).* Accordingly, a complete disclosure
should contain some indication of the practical application for the claimed
invention, i.e., why the applicant believes the claimed invention is useful.

Apart from the utility requirement of 35 U.S.C. 101, usefulness under
the patent eligibility standard requires significant functionality to be
present to satisfy the useful result aspect of the practical application
requirement. See *Arrhythmia, 958 F.2d at 1057, 22 USPQ2d at 1036.* Merely
claiming nonfunctional descriptive material stored in a computer-readable
medium does not make the invention eligible for patenting. For example, a
claim directed to a word processing file stored on a disk may satisfy the
utility requirement of 35 U.S.C. 101 since the information stored may have
some "real world" value. However, the mere fact that the claim may satisfy
the utility requirement of 35 U.S.C. 101 does not mean that a useful result
is achieved under the practical application requirement. The claimed
invention as a whole must produce a "useful, concrete and tangible" result to
have a practical application.

Regarding claims 1, 9 and 29, "A method for providing dynamic multi-
dimensional commodity modeling process ....." in claim 1, "A dynamic multi-dimensional
commodity model....." in claim 9 and "creating a commodity hierarchy data structure...."
in claim 29, are **data structure, per se**. The **data structure, per se** is not statutory.

Claim 9 does not include the claim statutory type. Therefore, the claims are not a

statutory system and should be rejected under 35 U.S. C. § 101 as not being tangible.

Claim Rejections - 35 USC § 102

5.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6.   Claims 1- 21, and 29-36 are rejected under 35 U.S.C. 102(b) as being

anticipated by Uehara et al (U.S. Patent No. 6,338,053, hereinafter, "Uehara").

With respect to claim 1, Uehara teaches creating a commodity hierarchy data

structure (fig. 3A-B, col. 4, lines 29-44, fig. 10A-B, col. 7, lines 8-19), at least one top

level node (i.e., commodity A, fig. 3A-B, col. 4, lines 29-44); and at least one leaf node

dependent upon the at least one top level node (i.e., color red and color blue in fig. 3A,

col. 4, lines 29-44); assigning attributes to nodes in the hierarchy, the attributes sharing

uniform characteristics (col. 4, lines 17-44); and selectively assigning at least one

dimensional attribute to a node operable for invoking an analysis based upon the at

least one dimensional attribute (i.e., commodity attribute is used for SQL execution, col.

6, lines 46-58); wherein dependent nodes inherit dimensional attributes assigned to

corresponding upper level nodes (i.e., dependent node color red 660 in fig. 3A inherits attribute from upper level node of commodity, fig .3A, col. 4, lines 21-44).

With respect to claim 2, Uehara teaches at least one secondary level node dependent on the at least one top level node; and at least one leaf node dependent on the at least one secondary level node (i.e., dependent node in fig. 3A depends from upper level node of commodity, fig .3A, col. 4, lines 21-44).

With respect to claim 3, Uehara teaches the attributes are dynamically alterable during instantiation of the multi-dimensional commodity modeling process (col. 7, lines 8-58).

With respect to claim 4, Uehara teaches the dimensional attributes are dynamically alterable during instantiation of the multi-dimensional commodity modeling process (col. 7, lines 8-58).

With respect to claim 5, Uehara teaches the invoking an analysis based upon the at least one dimensional attribute includes determining performance patterns related to a constituent (col. 7, lines 59-67 to col. 8, lines 1-63).

With respect to claim 6, Uehara teaches the at least one secondary level node comprises at least one nested sub-commodity (fig .3A, col. 4, lines 21-44).

With respect to claim 7, Uehara teaches the at least one dimensional attribute is selectively assignable to at least one of: a top level node; and a leaf level node (commodity A, fig. 3A-B, col. 4, lines 29-44).

With respect to claim 8, Uehara teaches the at least one dimensional attribute is selectively assignable to at least one secondary level node (fig. 3A-B, col. 4, lines 29-44).

With respect to claim 9, Uehara teaches a commodity hierarchical structure (fig. 3A-B, col. 4, lines 29-44, fig. 10A-B, col. 7, lines 8-19), at least one top level node (i.e., commodity A, fig. 3A-B, col. 4, lines 29-44); and at least one leaf level node (i.e., color red and color blue in fig. 3A, col. 4, lines 29-44); uniform attributes associated with nodes in the commodity hierarchical structure (col. 4, lines 17-44); and at least one dimensional attribute selectively assigned to at least one node in the commodity hierarchical structure, the at least one dimensional attribute operable for invoking an analysis (i.e., commodity attribute is used for SQL execution, col. 6, lines 46-58); wherein the at least one dimensional attribute is inherited down to corresponding nodes in the commodity hierarchical structure (i.e., dependent node color red 660 in fig. 3A inherits attribute from upper level node of commodity, fig .3A, col. 4, lines 21-44).

With respect to claim 10, Uehara teaches at least one secondary level node dependent on the at least one top level node; and at least one leaf node dependent on the at least one secondary level node (fig. 3A-B, col. 4, lines 29-44).

With respect to claim 11, Uehara teaches the uniform attributes are dynamically alterable during instantiation of the multi-dimensional commodity model (col. 7, lines 8-58).

With respect to claim 12, Uehara teaches the at least one dimensional attribute is dynamically alterable during instantiation of the multi- dimensional commodity model (col. 7, lines 8-58).

With respect to claim 13, Uehara teaches the analysis includes determining performance patterns related to a constituent (col. 7, lines 8-58).

With respect to claim 14, Uehara teaches the at least one secondary level node comprises at least one nested sub-commodity (fig. 3A-B, col. 4, lines 29-44).

With respect to claim 15, Uehara teaches the at least one dimensional attribute selectively assignable to at least one of: a top level node; and a leaf level node (col. 4, lines 17-44).

With respect to claim 16, Uehara teaches the at least one dimensional attribute is selectively assignable to said at least one secondary level node (col. 4, lines 17-44).

With respect to claim 17, Uehara teaches the uniform attributes comprise at least one of: sampling criteria; period definition; history definition; and type of measure (col. 7, lines 8-58).

With respect to claim 18, Uehara teaches the sampling criteria includes at least one of: a product type; an operations; a step; and a source (col. 5, lines 33-65).

With respect to claim 19, Uehara teaches dynamic multi-dimensional commodity model of claim wherein the period definition includes a unit of time to apply a specified analytic. (col. 5, lines 33-65).

With respect to claim 20, Uehara teaches the history definition includes a number of periods to be applied to a specified analytic (col. 5, lines 33-65).

With respect to claim 21, Uehara teaches the type of measure includes a type of analytic to be applied, said type of analytic including a Shewhart Control Chart (fig. 3A-B, col. 4, lines 29-44).

With respect to claim 29, Uehara teaches creating a commodity hierarchy data

structure (fig. 3A-B, col. 4, lines 29-44, fig. 10A-B, col. 7, lines 8-19), at least one top

level node (i.e., commodity A, fig. 3A-B, col. 4, lines 29-44), at least one leaf node

dependent upon the at least one top level node(i.e., color red and color blue in fig. 3A,

col. 4, lines 29-44), assigning attributes to nodes in the hierarchy, the attributes sharing

uniform characteristics (col. 4, lines 17-44); and selectively assigning at least one

dimensional attribute to a node operable for invoking an analysis based upon the at

least one dimensional attribute (i.e., commodity attribute is used for SQL execution, col.

6, lines 46-58); wherein dependent nodes inherit dimensional attributes assigned to

corresponding upper level nodes (i.e., dependent node color red 660 in fig. 3A inherits

attribute from upper level node of commodity, fig .3A, col. 4, lines 21-44).

With respect to claim 30, Uehara teaches at least one secondary level node

dependent on the at least one top level node; and at least one leaf node dependent on

the at least one secondary level node (fig. 3A-B, col. 4, lines 29-44).

With respect to claim 31, Uehara teaches the attributes are dynamically alterable

during instantiation of the multi-dimensional commodity modeling process. (fig. 3A-B,

col. 4, lines 29-44).

With respect to claim 32, Uehara teaches the dimensional attributes are dynamically alterable during instantiation of the multi-dimensional commodity modeling process (col. 7, lines 8-58).

With respect to claim 33, Uehara teaches the invoking an analysis based upon the at least one dimensional attribute includes determining performance patterns related to a constituent (fig .3A, col. 4, lines 21-44).

With respect to claim 34, Uehara teaches the secondary level node comprises commodity wherein said at least at least one nested sub-commodity (fig .3A, col. 4, lines 21-44).

With respect to claim 35, Uehara teaches the at least one dimensional attribute is selectively assignable to at least one of: a top level node; and a leaf level node (col. 5, lines 37-65).

With respect to claim 36, Uehara teaches one dimensional attribute is selectively assignable to at least one secondary level node (col. 5, lines 37-65).

7.   Claims 22-26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
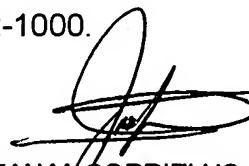
Conclusion

8.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to Isaac M. Woo whose telephone number is (571) 272-4043. The examiner can normally be reached on 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hosain T. Alam can be reached on (571) 272-3978. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JEAN M. CORRIELUS
PRIMARY EXAMINER

IW
July 17, 2006